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**Packers Sanitation Services, Inc., LTD. and United Food & Commercial Workers International Union Local 540, AFL-CIO, CLC.** Case 16-RC-294032

June 28, 2022

ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS RING  
AND PROUTY

The Employer's request for review<sup>1</sup> of the Regional Director's determination to convert the manual election to a mail-ballot election is denied as it raises no substantial issues warranting review.

Contrary to the Employer, the issue here is not whether the Regional Director abused his discretion under *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), by converting the manual election to a mail-ballot election. Although the parties entered into a Stipulated Election Agreement providing for a manual election, the agreement also provided that:

The Regional Director has and retains the full and complete discretion to determine whether it is unsafe, for any reason, to conduct a manual election on the stipulated date. Further, if the Regional Director determines a manual election is unsafe, or if the election is postponed or cancelled for any other reason, the Regional Director has and retains sole and complete discretion to reschedule the date, time, location, and/or manner of the election, including converting the election to a mail ballot election, as he deems appropriate.

"The Board has long held that election agreements are 'contracts,' binding on the parties that executed them." *T & L Leasing*, 318 NLRB 324, 325 (1995). The Board will enforce election agreements "provided their terms are clear, unambiguous, and do not contravene express statutory exclusions or established Board policy." *Id.*

The Employer does not contend that this rescheduling provision is ambiguous, nor could it: the provision clearly gives the Regional Director "full and complete discretion" to determine that it would be "unsafe" to conduct a manual election "for any reason" and gives the Regional Director

"sole and complete discretion" to change the election type upon making such a determination. Nothing in this provision contravenes the Act, which—aside from providing for elections to be conducted by secret ballot—does not discuss the way elections are to be conducted.

Finally, although it is possible that a mail-ballot election would not have been warranted had the issue been litigated, this circumstance does not demonstrate that the rescheduling provision is contrary to established Board precedent. Cf. *Otis Hospital*, 219 NLRB 164, 165 (1975) ("[A] stipulated unit which does not comport with the standards announced in contested cases will not be cast aside solely because it designates a unit we might find inappropriate had resolution of the issue not been agreed upon by the parties."). For the Board to review the stipulation de novo and make its own findings now would "undercut[] the very agreement which served as the basis for conducting the election." *Tribune Co.*, 190 NLRB 398, 398 (1971). In the absence of any argument or indication that the Regional Director otherwise breached or misapplied this agreed-upon provision, we will hold the parties to it.<sup>2</sup>

Dated, Washington, D.C. June 28, 2022

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Lauren McFerran, Chairman

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John F. Ring, Member

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David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> We have treated the Employer's "request for special permission to appeal" the Regional Director's order as a request for review under Sec. 102.67(c) of the Board's Rules and Regulations.

<sup>2</sup> The Employer's request for review asserts that certain employees do not have or maintain an active mailing address and would therefore be disenfranchised by a mail-ballot election. While such concerns could be relevant to whether the direction of a mail-ballot election is

appropriate, the parties here, as discussed above, entered into a Stipulated Election Agreement that provided the Regional Director "sole and complete discretion" to convert the election to a mail-ballot election if he determined that a manual election would be unsafe. Any party is free to present evidence of any actual disenfranchisement of voters, if applicable, in post-election objections.